

FINAL REPORT

**TITLE V PERMIT
CERTIFICATION REQUIREMENT**

Prepared by

**COLLIER, SHANNON, RILL & SCOTT
ATTORNEYS-AT-LAW
3050 K Street, N.W.
Suite 400
Washington, D.C. 20007
(202) 342-8400**

Prepared For
National Steel and Shipbuilding Company
Harbor Drive and 28th Street
San Diego, California 92186

In behalf of
SNAME SHIP PRODUCTION COMMITTEE PANEL SP-1
on
FACILITIES AND ENVIRONMENTAL EFFECTS

Under the
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Collier, Shannon, Rill & Scott

Attorneys-at-Law
3050 K Street, No.W.
Suite 400
Washington, D .C. 20007

Tel.: (202) 342-3400
Fax (202) 333-5534

747 Third Avenue
New York, New York 10017
Tel.: (212) 688-4800
Fac (212) 688-6807

16-18 O'Connell street
Level 8
Sydney, NSW 2000, Australia
Tel.: 61-2-228-6788
F aic 61-2-228-2737

MEMORANDUM

June 1, 1995

TO: NATIONAL SHIPBUILDING RESEARCH PROGRAM

FROM: JOHN L. WITTENBORN
CHET M. THOMPSON

RE: . CAA TITLE V PERMIT CERTIFICATIONS

I. INTRODUCTION

The purpose of this memorandum is to set forth the scope of a reasonable inquiry which would meet the requirements of the Clean Air Act ("CAA") Title V operating permit program and provide shipyards and their certifying officials with a due diligence standard that will assist them in their review of the permit application. The 1990 amendments to the CAA included Title V, which imposes procedural requirements on "major" and certain other sources to obtain a federal operating permit in order to begin or continue operations. The federal permit program, which will be administered by the states, is intended to codify into one permit all applicable federal CAA requirements that apply to an individual source. 1/

1/ Federal CAA requirements include those specifically required by the CAA, as well as state requirements that have been incorporated into State Implementation Plans ("SIPS").

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The U.S. Environmental Protection Agency ("EPA") issued its operating permit regulations on July 21, 1992. These requirements, which are codified at 40 C.F.R. Part 70 ("Part 70"), set forth the minimum requirements that each state permit program must include in order to obtain EPA approval. The states were required to submit their permit programs to EPA by November 1993. EPA is now in the process of reviewing the state submissions. Once a state receives either partial or full approval, sources within the state will have to submit their permit applications according to the time frames established by the state.

Pursuant to Part 70, the following sources are required to obtain a federal operating permit:

- "major sources" as defined under the CAA;
- "affected sources" as defined in CAA Title IV (*i.e.*, acid rain);
- sources subject to CAA section 111 (*i.e.*, *New Source* Performance Standards);
- air toxic sources regulated under CAA section 112;
- sources required to have new source or modified permits under Part C or D of CAA Title I;
- other sources designated by EPA in regulations.

40 C.F.R. §70.3. EPA has decided to defer applicability of Part 70 to non-major sources, at least for the initial stages of the permit program. While the states have the authority to require all sources to obtain a Part 70 permit, most states have also elected to defer applicability for non-major sources. Although EPA has generally deferred requiring non-major sources from obtaining a Part 70 permit, EPA does have the authority to subject non-major sources to hazardous air pollutant ("HAP") standards promulgated under CAA section 112. Sources that are subject to a section 112 Maximum Achievable Control Technology ("M.ACT") standard are required to obtain a Title V permit even if they are non-major sources. In light of EPA's decision to defer

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applicability of Part 70 for non-major sources, the primary focus of the federal permit program is on “major sources.”

A major source is defined in terms of all emission units under common control at the same plant (i. e., within a contiguous area in the same two-digit, industrial classification). Once subject to the Part 70 operating permit program for one pollutant, a major source must submit a permit application that includes pertinent information on all emissions of all “regulated air pollutants” from all emission units located at the facility.

II. INDUSTRY BACKGROUND

The shipbuilding and ship repair industry consists of facilities that build and repair ships with metal hulls. The industry also includes the painting, coating, blasting, conversion and alteration of ships. For purposes of defining which shipyards will be subject to future rulemaking, EPA has defined a ship as follows:

[A]ny metal marine or fresh-water metal hulled vessel used for military or commercial operations, including self-propelled vessels and those towed by other craft (barges). This definition includes, but is not limited to all military vessels, commercial cargo and passenger (cruise) ships, ferries, barges, tankers, container ships, patrol and pilot boats, and dredges. 2/

Alternative Control Technologies Document: Surface Coating Operations at Shipbuilding and Ship Repair Facilities, EPA 453/R-94-032, pg. 2-1 (April 1994) (hereinafter “ACT”).

The three primary emissions from the shipbuilding industry are volatile organic compounds (“VOCS”), HAPs, and particulate matter (PM-10). The vast majority of emissions from shipyards are VOCS, most of which come from organic solvents contained in marine paints

2/ Recreational boats and yachts are not included within this definition.

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and coatings, and solvents used for cleaning and thinning. Most of the VOCS contained in marine coatings are emitted to the atmosphere as the paint is applied and cured. Because most HAPs are also VOCS, coating operations are also the primary source of HAP emissions. At most large shipyards, painting is done outdoors, thereby making it difficult to capture and control VOC and HAP emissions. PM-10 emissions are primarily the result of abrasive blasting. Abrasive blasting is used to prepare metallic surfaces to ensure adhesion and performance of protective coatings. Blasting is also used below the waterline to remove marine growth, algae, and barnacles.

Shipyards are not currently subject to national federal emission standards. However, EPA has recently proposed National Emission Standards for Hazardous Air Pollutants ("NESEHAP") for Shipbuilding and Ship Repair that would establish HAP emissions at a level attainable by MACT. 59 Fed. Reg. 62,681 (December 6, 1994). EPA has also proposed that the proposed MACT standard operate as the Control Technique Document ("CTG") for controlling VOCS and PM-10 emissions from the shipbuilding industry to a level that may be achieved through adoption of best available control measures ("BACM"). 3/ *Id* at 62,682. The BACM standards will operate as the basis for regulating VOCS and PM-10 from shipyards.

EPA's proposed MACT standard would apply to any facility that has the potential to emit 10 tons per year or more of any one HAP or 25 tons per year or more of any combination of HAPs. *M* at 62,683. EPA expects that at least 25 shipyards will exceed this threshold and be subject to the proposed rule. The proposed MACT standard would impose emission limits on

3/ CAA section 183(b)(4) requires EPA to issue CTGS to reduce aggregate emissions of VOCS and PM-10 into the ambient air from paints, coatings, and solvents used in shipbuilding and ship repair.

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the HAP content of 23 types of coatings used at shipbuilding facilities. M. The limits would be stated in terms of mass HAPs per volume of coating less water and negligibly photochemical reactive compounds. Alternative means of compliance, other than using compliant coatings, may be used if approved by EPA. Compliance with the VOC limits would have to be demonstrated monthly. *Id.* See Attachment A for a listing of the proposed limits.

In the proposed MACT rule, EPA has also proposed not to issue a separate CTG for VOCs and PM-10. *Id.* at 62,682. Rather, EPA has proposed that the MACT standard also operate as BACM for VOCS and PM-10. According to EPA, the only difference between the proposed MACT standard and BACM is that BACM would be stated in terms of VOCS rather than HAP units. *Id.* As stated above, if the BACM standard is adopted it would be used to set emission standards for VOCS and PM-10. 4/ Both the MACT and BACM standards would become effective within one year after the promulgation of EPA's final MACT rule.

Shipyards that perform chromium electroplating activities are subject to EPA's final NESHAP for hard and decorative chromium electroplating and chromium anodizing tanks. See 60 Fed. Reg. 4,448 (January 25, 1995). EPA's final MACT standard for chromium electroplating establishes emission standards and reporting requirements for both major and area sources. See Attachment B for a summary of the emission standards and reporting requirements. According to the proposed rule, any source subject to the final MACT rule is required to obtain a Part 70 permit, regardless of whether it is a non-major source. However, EPA's MACT standard is

4/ However, according to EPA's ACT for shipyards, no technology for controlling particulate emissions from shipyards has yet to be demonstrated. Therefore, EPA has no recommendations for BACM for particulate emissions.

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currently subject to litigation concerning its failure to delineate between major and non-major sources. EPA is believed to be considering modifying its MACT standard to make it applicable only to major sources. If EPA were to modify the standard in such a manner, then “non-major” facilities that perform chromium electroplating activities would not be automatically subject to the Part 70 regulations.

The emission standards discussed above are only some of the potential applicable emission standards that must be identified in a Part 70 permit application. The list is in no way meant to be exhaustive. Many shipyards are currently subject to state VOC and PM-10 standards. State standards which have been incorporated into SIPS are considered federal standards and must be included in a source’s Title V permit application. A thorough evaluation of state regulations and SIPS should be performed prior to the submission of a federal permit application. Failure to identify a SIP requirement could result in an incomplete permit application. Shipyards should consult legal counsel to ensure that all applicable standards have been properly identified.

III. ANALYSIS

A. **Permit Content**

The Part 70 regulations establish standards for all aspects of the operating permitting program, including the minimum level of information that a source must include in their permit applications. See 40 C.F.R. §70.5. According to 40 C.F.R. § 70.5(c), a complete permit application must include the following information:

- (i) All emissions of pollutants for which the source is major, and all emissions of *regulated air pollutants*. A permit application shall describe all emissions of regulated air pollutants emitted from any emission unit, except when such emission unit is exempt. . . . The permitting authority

shall require additional information related to the emissions of air pollutants *sufficient to verify which requirements are* applicable to the source, and other information necessary to collect any permit fees. . . .

- (ii) Identification and description of the points of emissions described in paragraph [above] in *sufficient detail to establish the basis for fees and applicability of requirements of the Act.*

(Emphasis added.)

For purposes of the Title V permitting program, EPA has defined “regulated air pollutants” as:

- (1) Nitrogen oxides and any volatile organic compounds;
- (2) Any pollutant for which a national ambient air quality standard has been promulgated;
- (3) Any pollutant that is subject to any standard promulgated under section 111 of the Act
- (4) Any Class I or II substance subject to a standard promulgated under or established by Title IV of the Act; or
- (5) Any pollutant subject to standards promulgated under section 112 or other requirements established under section 112, including sections 112(g), (j), and (r) of the Act.

Id. §70,2.

The 189 pollutants listed in CAA § 112(b) are not considered “regulated air pollutants” until addressed in a requirement that the pollutant be controlled by a source. With the promulgation of EPA hazardous organics National Emission Standard for Hazardous Air Pollutants, most of EPA’s listed HAPs are now considered regulated air pollutants. See 59 Fed. Reg. 19,402 (April 22, 1994).

The definition of “regulated air pollutants” is important because it determines which pollutants and emission units must be addressed in a source’s Title V permit application. Once a source is subject to Title V, its emissions of all regulated air pollutants must be described in

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its permit application, except for those emissions that a state permitting authority determines are “insignificant” and therefore exempt. According to an EPA guidance document, it is EPA’s interpretation that if a pollutant is regulated for one source category, then the pollutant is a regulated air pollutant for all source categories, with one exception: pollutants that are regulated based on a case-by-case MACT determination are only considered regulated air pollutants for the individual source for which the MACT determination was made. See EPA Memorandum from Lydia N. Wegman, Deputy Director, Office of Air Quality Planning and Standards, to Air Division Director, Regions I-X (April 26, 1993). If a pollutant is not a “regulated air pollutant,” then a source is not required to report it on its Title V application.

B. Certification Requirements

In addition to identifying all regulated air pollutants a completed permit application must be certified by a “responsible official.” 5/ 42 U.S.C. § 76510; 40 C.F.R. § 70.5(d) (10). The application certification, as well as any other certification required under the Title V program,

5/ Responsible official means one of the following:

(1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

- (i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
- (ii) The delegation of authority to such representative is approved in advance by the permitting authority.

40 C.F.R. §70.2. The certification requirement only allows delegation of the responsibility for certification as far as the plant manager.

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must state that “based on information and belief formed after a reasonable inquiry, the statements and information in the document are true, accurate, and complete.” *Id.* (emphasis added). A failure to comply with any provision of the permitting program, including permit application and certification requirements could result in civil or criminal penalties. See CAA § 113; 42 U.S.C. § 7413.

The key element of the certification is that a responsible official has performed a “reasonable inquiry” before certifying to the truth, accuracy, and completeness of the application. “Reasonable inquiry” is not defined in the CAA nor the final Part 70 regulations, nor has EPA provided any guidance on how it interprets the “reasonable inquiry” requirement. Moreover, EPA’s analogous permitting programs such as the Clean Water Act (“CWA”) National Pollutant Discharge Elimination System (“NPDES”) program and the Resource Conservation and Recovery Act (“RCRA”) Subtitle C permit program do not contain the “reasonable inquiry” certification language.

The only reference to the reasonable inquiry requirement appears in the preamble to the proposed rule, which indicates that the “reasonable inquiry” requirement is “modeled on Rule 11 of the Federal Rules of Civil Procedure.” 56 Fed. Reg. 21,712, 21,734 (May 10, 1991). Therefore, we have taken the information that currently is available on the Rule 11 “reasonable inquiry” standard, analyzed it, and produced a proposed program for shipyards to follow that will satisfy the reasonable inquiry requirement.

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C. The “Reasonable Inquiry” Requirement Is Modeled on Rule 11

In the preamble to the proposed rule, the “reasonable inquiry” requirement is described as “modeled on” Rule 11 of the Federal Rules of Civil Procedure. Specifically, the preamble states:

his language is similar to that in Rule 11 of the Federal Rules of Civil Procedure, upon which it was modeled. The provision makes clear that the signer must make a reasonable (under the circumstances) inquiry before attesting to the truth, accuracy and completeness of the information and statements.

Id. at 21,734.

Rule 11 of the Federal Rules of Civil Procedure provides:

(b) Representation to Court. By presenting to the court (whether by signing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that *to the best of the person’s knowledge, information and belief formed after an inquiry reasonable under the circumstances*. . . .

Rule 11 essentially requires that, before signing, an attorney must have read the pleading, made a reasonable inquiry into its factual and legal basis, and not have filed it for an improper purpose.

Id. Because the certification requirement is modeled on Rule 11, the same factors should be considered for certification.

In determining whether an attorney has made a reasonable inquiry in the Rule 11 context “[t]he standard is one of reasonableness under the circumstances.” *Business Guides, Inc. v. Chromatic Communications Enter, Inc.*, 498 U.S. 533,551 (1991). The adequacy of the inquiry is measured at the time of filing. Courts are “expected to avoid using the wisdom of hindsight and should test the signer’s conduct by inquiring into what was reasonable at the time the pleading was submitted.” *Id.*

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The purpose of the “reasonable inquiry” requirement in Rule 11 is to protect attorneys who reach *reasonable, but erroneous*, conclusions about the validity of their cases. *Eastway Const Corp. v. City of New York*, 637 F. Supp. 558 (E.D.N.Y. 1986). Under Rule 11,

If an attorney makes a reasonable investigation under the circumstances and concludes based on that investigation that the pleading is well grounded in law and fact, he cannot be sanctioned for filing the pleading when time and discovery prove that the plaintiff does not in fact have a viable claim.

Id. at 567.

In several recent cases construing Rule 11, the standard for “reasonable inquiry” has been described as “what reasonable attorneys would have relied on under the circumstances.” *Id.* Instances where the courts have imposed sanctions for violations of Rule 11 involve conduct which is clearly substandard. *Chemiakin v. Yejmov*, 932 F.2d at 124, 126 (2d Cir. 1991); *EastWay Const. Corp. v. New York*, 762 F.2d 243, 253-54 (2d Cir. 1985). Based on these and other wise interpreting the requirements of “reasonable inquiry” under Rule 11, the standard is flexible and depends upon the unique facts of each situation.

Applying this standard in the context of the Part 70 permit allows the certifying official some flexibility. For example, if it is later discovered that information in the permit application is incorrect, the certification is not automatically false and the certifying official is not automatically at fault. The certifying official will be judged against what his peers would have considered to be a reasonable inquiry under the circumstances. If an enforcement action is brought against a shipyard facility, the courts would not use hindsight to determine whether the inquiry was reasonable.

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D. Other Permitting Programs

Although NPDES and RCRA permits differ from Title V permits in that they do not contain “reasonable inquiry” certification language, the standard for certification in those programs may be helpful to ascertain the heightened CAA “reasonable inquiry” requirement. In 1980,” EPA issued a policy statement concerning the certification requirement under the CWA NPDES permit program. It stated that:

The requirement that the signer of a permit application or other report have “personally examined” and be “familiar” with the information submitted means the signer must have read the document, must sufficiently comprehend the information contained in the document and its regulatory consequences to enable him or her to make a *reasonable inquiry as to the truth, accuracy, and completeness of the information*. The inquiry must provide the signer with a reasonable basis to believe that the information submitted is true, accurate and complete. In general, the signer at least must inquire of the person or persons who supervised the collection of the information. If inquiry of these supervisors is insufficient to provide a reasonable basis to believe that the information is true, accurate, and complete, the signer must make inquiry as necessary to establish that basis before signing the document.

45 Fed. Reg. 52,149 (August 6, 1980). This policy statement specifically uses the term “reasonable inquiry” and then describes the activities that EPA considers to be an adequate basis for a responsible official to rely on in certifying to the truth, accuracy, and completeness of the information. The certification requirement under the CWA should be considered the minimum requirement for purposes of Part 70.

E. EPA’s Interpretation of the Reasonable Inquiry Requirement

We have discussed this issue with several EPA officials and they have confirmed that currently there is no EPA guidance on the reasonable inquiry standard. Kirt Cox of EPA’s Office of Air Quality of Planning and Standards (“OAQPS”) stated that the Part 70 regulations should

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be interpreted using “common sense.” He stressed that as long as applicants were “honest” and had a reasonable justification for what they tested for and reported, EPA would not initiate a criminal or civil action against the source. ^{6/} Lydia Wegman, the Deputy Director of OAQPS, confirmed Mr. Cox’s statements.

IV. RECOMMENDED “REASONABLE INQUIRY”

Based on the above information% we have devised the following outline to guide shipyards through the permit certification process and specifically to satisfy the “reasonable inquiry” requirement. To begin with, each Title V source should focus its attention on “involving,” “informing,” and “educating” the certifying official on the information contained in its permit application. The focus need not be, necessarily, on the steps taken to compile the permit application. As discussed above, the purpose of the increased stringency of the CAA Title V certification is to ensure that higher-management is “involved” in the permitting process.

Based on Part 70, at a minimum a responsible corporate official has two obligations before he can certify a permit application: (1) the certifier must review the application and *all* supporting information; and (2) the certifier must reasonably inquire into the truth, accuracy, and completeness of the permit application and supporting documentation. Though not a requirement *per se*, some level of involvement by the certifying official in the permit application development is expected. Therefore, we have summarized some basic steps that would satisfy the “reasonable inquiry.” We recommend that the corporate official certifying the truth of the permit application:

^{6/} It should be noted that Mr. Cox does not speak for EPA’s Enforcement Division.

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(1) be “involved” in the application development process; (2) review the application and all supporting documents; and (3) comprehend the information contained in the permit application.

A. Step I: Involvement in the Application Process

As discussed above, the intent of the Title V certification is to involve the certifying official in the application process. That is not to say that the certifier needs to handle the day-to-day permit application process. Rather, the certifier should be in a position at least to oversee and review the process through which the application was prepared and be aware of any major decisions made as the application development proceeds.

In order to demonstrate higher-management’s “involvement” in the application process, we recommend the development and implementation of a “Title V permit management system.” The major purpose of the management system should be to open channels of communication between management and the various persons and outside consultants actually preparing the permit, thereby ensuring that management is informed of the requirements of Part 70 and involved in any “key” decisions. Suggested elements of a management system are as follows:

1. Establishment of a Permit Team

The crux of the Title V management system is the creation of a Title V permit team. The team should consist of management personnel, counsel, and environmental compliance or engineering personnel responsible for collecting data and preparing the permit application. The management system should establish: (1) qualifications for team members to ensure that the most qualified personnel are involved in the various components of the application process; (2) lines of authority for decision making, including management involvement in all key decisions; (3)

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clear lines of communication between members of the permit team and the certifier; and (4) safeguards to ensure that permit team members other obligations do not interfere or conflict with their permit team tasks. The permit team should also meet regularly and brief the certifier and other management personnel on the application process.

2. Establish Corporate Policy for Title V Application Process

The management system should include a corporate policy that: (1) ensures coordination by all affected corporate departments, including environmental, purchasing, accounting and finance, maintenance, and production (2) establishes the authority of the permit team leader so that all employees will cooperate with the permit team; and (3) establishes a direct reporting system for the permit team leader to management.

3. Define Role and Responsibility of Certifier

The role and responsibility of the certifying official should be defined to ensure that he remains informed of the application process. The certifier should: (1) attend permit team meetings or receive detailed briefings by the permit team; (2) participate in key decisions; (3) be informed of the permit data including emissions inventory, monitoring, and modelling data, and (4) review compliance, monitoring, record keeping, and reporting requirements identified and set forth in the application. The more involved the certifier is in the process, the more likely that his inquiry would be deemed "reasonable."

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4. Ensure Data Quality

The permit team, in conjunction with management and any outside consultants, should establish and document a justifiable data quality assurance/quality control methodology for all data collected for Title V purposes.

5. Document Basis of Permit Team's Decisions

Throughout the application process, the permit team should document its progress, the underlying bases for information contained in the permit application, as well as the extent of management involvement in "key" decisions. For example, if the permit team decided to measure HAP emissions by calculating actual HAP contents of a solvent, as opposed to using the total VOC content as a measure of the HAP content, then the basis for that decision should be documented. In addition, briefings provided to the permit certifier should be reduced to writing and preserved with the permit application development documents.

All documents, observations, notes, findings, opinions, suggestions, conclusions, drafts, memoranda, photographs, and drawings that were prepared as part of an "environmental audit report," should be marked "Environmental Audit Report: Privileged Document" and treated as a privileged document. In the event of a future criminal or civil enforcement action, a source might be able to assert that these documents are privileged under a state or federal audit privilege, if such a privilege applies. Additionally, any document that is prepared by counsel should be

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marked and treated as privileged and confidential based on the attorney-client and attorney work-product privileges. 7/

B. Step II: Review the Application and All Supporting Documentation

Part 70 requires the certifier to review the permit application and all supporting information in their entirety. Consequently, before the permit application is certified, the certifying official should review, with the support of the source's Title V permit team, the permit and all supporting documentation page-by-page. The certifying official should not rely on unsupported statements from plant personnel that the permit is complete; nor should the certifier merely "go through the motions" and flip through the permit application. The certifier should examine all the documents in an attempt to understand both the questions asked and the justifications for all responses. The permit team should prepare an index of the permit application and its supporting documentation which the certifier can check off as he reviews each component.

Each of the steps in the Title V application process demonstrating the scope of the certifier's review should be documented and kept on file. In the event that EPA or a state official questions the certifying official's inquiry into the truth accuracy, and completeness of the document the source would be in a position to provide documentation on the extent of the review process.

7/ Shipyards should consult counsel for specific advice and analysis of the various means to protect documents developed during the Title V application process, including a state's audit privilege (if applicable) and the attorney-client and attorneywork-product privileges.

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C. Step III: The Certifier Should Inquire Into the Truth, Accuracy, and Completeness of the Document

As the review of the permit application and its contents proceeds as described in Step II, the certifier should question the Title V permit team as to the nature of the specific information set forth in each section of the permit. For each question, the certifier should inquire into the factual basis and justifications for each response. For permit responses that require interpretation of the regulations or decisions between potential alternative approaches, the Title V permit team should disclose the considerations that went into the ultimate decisions, explain the various alternatives, and fully explain the justification for the specific response and its regulatory ramifications.

In addition to any checklist that may be provided in a state's permit application, we recommend that the certifier use the list of questions that we have provided below. The certifying official should not certify the permit application until he: (1) understands the information requested and the basis for the response; and (2) is satisfied that the basis and justification for each response is reasonable. By going through each of the questions listed below, the certifier can be assured that he has reviewed the application in its entirety.

Taken as a whole, we are confident that if the certifier follows these three steps he will have conducted a "reasonable inquiry" into the truth, accuracy, and completeness of the application. Provided that each of these steps are documented, the likelihood that EPA, a state, or a citizen's group would initiate a suit based on the certification is minuscule. We are even more confident that if an enforcement action were initiated, a source following the procedures outlined above would have ample proof that the certifier "reasonably inquired" into the truth,

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accuracy, and completeness of the application. Again, the focus of an enforcement action based on the certification provision would have to be based on the certifier's failure to reasonably inquire into the document, not on the fact that information was later proven to be false or incomplete.

V. SUGGESTED CORPORATE POLICY

To protect both a company and its Title V certifier from potential liability, the source subject to Part 70 should incorporate the following steps into its Corporate Policy for Complying with Title V:

Responsible Official Application Certification

Policy: It is the corporation's policy to have a "responsible corporate official" review Title V permit applications and all supporting documentation, and to conduct a reasonable inquiry into the truth, accuracy, and completeness of the application prior to certification.

Step I: Involve Management and Certifier in Application Process

The corporation will develop a Title V management system that ensures that management is informed of its CAA Title V obligations and is involved in the application process. The corporation will establish a Title V permit team to compile the necessary data and complete the permit application. The responsible official who certifies to the truth, accuracy, and completeness of the Part 70 permit application will be a member of the Title V permit team and will be involved in the preparation of Title V permit application. The certifier will be advised of the

progress of the application process, and will participate in the Title V permit application decision making functions,

Step II: Review Application and Supporting Documentation

- A responsible official, with the assistance of the corporate Title V permit team, shall review the permit application and all supporting documentation in their entirety.

Step III: Inquiry Into Truth, Accuracy, and Completeness

- In conducting the permit review, the certifier will inquire into the specific information requested for each section of the permit and the justifications for each response. In addition, the certifier will solicit from the permit team the bases for all information contained in the permit application and supporting documents, as well as the methodology, quality assurance, and review process used. Before certifying the permit application, the certifier will ensure that: (1) the Title V permitting team has a justifiable and reasonable basis for all of the information contained in the permit; and (2) an appropriate system or process was implemented to ensure that the permit application is truthful, accurate, and complete.
- For each applicable section of the permit the responsible corporate official will ask the following types of questions:

Emission units

- e How are emission units defined?
- Who identified all emission units?
- What are the qualifications of those persons?
- What method was used to identify the units?

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- What type of review and quality assurances/controls were in place?
- What are the ramifications of any errors?
- Who reviewed the list of emission units?

Emission inventory

- What types of emissions are required to be identified?
- Who was responsible for identifying the emissions?
- Why were those persons selected?
- What are their qualifications?
- How were the emissions identified?
- Were “insignificant” emissions identified?
- What were the bases for the determination that emissions are “insignificant”?
- Were actual emissions identified for fee purposes?
- Was actual testing performed? Emission factors used? Other information?
- Who determined how to identify emissions?
- What was the basis for each determination?
- What were the specific processes used?
- What level of reliability do the test methods have?
- How reliable are the emission factors?
- Where were the tests performed? *On* what sources? When?
- Was a data quality objective process used?
- What quality assurances/control methods were used?
- What was the margin of error?
- Why is this acceptable?
- What were emissions based on? Potential to emit? Actuals?
- Who reviewed the test results? What types of data quality/assurances were used?
- Were the test results certified? By whom?
- What, if any, difficulties arose?

Applicable requirements

- What requirements is the source subject to?
- How were they identified?
- who was responsible for the identification?
- Was outside counsel used?
- What are counsel’s qualifications?
- What procedures were used?
- Were all federal requirements identified?
- Were state only requirements identified as such?

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- Who reviewed the initial results?
- What internal (external) review procedures were used to ensure the accuracy and completeness of the applicable requirements?

Compliance determination

- Is the source in compliance with all applicable environmental requirements?
- Who determined the source's compliance status?
- Why were those persons selected?
- What are their qualifications?
- What process was used to determine compliance?
- What review process was used? Reliability?
- What type of quality assurance/quality controls were used?
- Was outside counsel used? Why? Why not?
- Has a compliance schedule been prepared for those requirements with which the source is out of compliance?
- What was basis for compliance schedule?
- What does the source have to do to come into compliance? Time frame?
- What does the source need to do to remain in compliance?

Standard operating scenarios

- What are the source's standard operating scenarios?
- Who identified the possible alternatives?
- Why were they selected?
- What review process was utilized?
- What ramifications does each operating scenario have on the source's regulatory requirements?

Monitoring requirements

- What monitoring requirements is the source subject to?
- What method will the source use to certify compliance?
- Has the source identified units subject to enhanced monitoring requirements?
- Who determined which are the applicable emission units?
- Who developed the proposed enhanced monitoring requirements?
- What was the basis for the proposed protocols?
- Do they comply with requirements of enhanced monitoring?
- What was the engineering basis for determination?

- What level of accuracy will the proposed monitoring protocol provide?
- .. Who reviewed the proposed protocols? Internal? External?

Other information requirements

- ° What other types of information are required in the application?
- What was the basis for the source's responses?
- Who reviewed the information?

Other sections of the permit application should be subject to the same level of inquiry as that described above. Additional questions or other areas of inquiry should be documented.

VI. CONCLUSION

The federal Part 70 regulations require a responsible corporate official to certify to the truth, accuracy, and completeness of the permit application based on a "reasonable inquiry." By following the steps outlined above, a certifier will have satisfied the reasonable inquiry requirement and neither EPA, the regulating state, nor a citizen's group would have a basis upon which to initiate a civil or criminal suit founded on the Title V application certification.

Attachments

TABLE 1.—PROPOSED VOLATILE ORGANIC HAP (VOHAP) CONTENT LIMITS FOR MARINE COATINGS

coating Category	VOHAP limits		VOHAP limits	
	Grams per liter	Pounds per (lb/gal)	per liter	Pounds per gallon (lb/gal)
General use	340	233	571	4.76
Specialty:				
Air flask	340	2.83	571	4.76
Antenna	530	4.42	1,439	12.00
Antifoulant	400	3.33	761	6.38
Heat resistant	420	3.50	841	7.00
High gloss	420	3.50	841	7.00
High temperature	500	4.17	1,237	10.31
Inorganic zinc high-build primer	340	2.83	571	4.76

TABLE 1.-PROPOSED VOLATILE ORGANIC HAP (VOHAP) CONTENT LIMITS FOR MARINE COATINGS-Continued

coating category	VOHAP limits ^{a,d}		VOHAP _{sol} limits ^{a,d}	
	Grams per liter	Pounds per gallon (lb/gal) ^b	Grams per liter (g/L)	Pounds per gallon (lb/gal) ^b
Military exterior	340	2.83	571	4.76
Mist	610	5.06	2,235	18.63
Navigational aids			1,597	13.31
Nonskid	340	2.83	571	4.76
Nuclear	420	3.50		7.00
Organic zinc	360	3.00	630	
Pre-treatment wash primer	760	6.50	11,095	5.25
Repair and maintenance of thermoplastic coating of commercial vessels		4.56	1,597	13.31
Rubber camouflage	340	2.63	571	4.76
Sealant coat for thermal spray aluminum	610	5.08	2,235	18.63
Special marking	490	4.06	1,178	9.82
Specialty interior	340	2.83	571	4.76
Tack coat	610	5.08	2,235	18.63
Undersea weapons systems	340	2.63	571	4.76
Weld-through (shop) primer	650	5.42	2,885	24.04

^a Volatile organic HAP limits (for compliance options 1 through 4) are expressed in units of mass of VOHAP per volume of coating less water and non-HAP "exempt" solvents, as applied. Volatile compounds classified by EPA as having negligible photochemical reactivity are listed as "exempt" in 40 CFR 51.100(s) (except those on the HAP list).

^b To convert from g/L to lb/gal, multiply by: [(3.785 L/gal)/(lb/453.6 g)] or (lb-L/120 g-gal).

^c Alternate volatile organic HAP (VOHAP_{sol}) limits (for compliance option 5) are expressed in units of mass of VOHAP per volume of solids, a value that assumes the volumes of all components within a coating are additive.

^d For compliance purposes, the metric limits are the standard.

TABLE 1.—STANDARDS FOR CHROMIUM ELECTROPLATING AND CHROMIUM ANODIZING TANKS BASED ON M

Type Of tank	Emission imitations	
	Small	Large
Hard Cromium Plating Tanks		
All existing tanks	0.03 mg/dscm (1.3×10^{-3} gr/dscf)	0.015 mg/dscm (6.6×10^{-4} gr/dscf)
All new tanks	0.015 mg/dscm (6.6×10^{-4} gr/dscf)	0.015 mg/dscm (6.6×10^{-4} gr/dscf)
Decorative Chromium Platlng Tanks Usng a Chromic Acid Bath		
All new and existing tanks	0.01 mg/dscm*(4.4×10^{-4} gr/dscf)	
Chromium Anodizing Tanks		
All new and existing.....	0.01 mg/dscm(4.4×10^{-4} gr/dscf)	

an alternate emission limitation of 45 dynes/cm (3.1×10^{-3} lb/ft), owners or operators using a fume suppressant containing a wetting agent as a control technique.

Owners and operators of all affected sources are also subject to work practice standards, which require complete an operation and maintenance (O&M) plan that contains the minimum elements of §63.342(f)(2).

TABLE 2.—SUMMARY OF WORK PRACTICE STANDARDS

Control technique	Work practice standards	Frequenc
Composite mesh-pad (cmp) system	<ol style="list-style-type: none"> 1. Visually inspect device to ensure there is proper drainage, no chromic acid buildup on the pads, and no evidence of chemical attack on the structural integrity of the device. 2. Visually inspect back portion of the mesh pad closest to the fan to ensure there is no breakthrough of chromic acid mist. 3. Visually inspect ductwork from tank or tanks to the control device to ensure there are no leaks. 4. Perform washdown of the composite mesh-pads in accordance with manufacturers recommendations. 	<ol style="list-style-type: none"> 1. 1/quarter. 2. 1/quarter. 3. 1/quarter 4. Per manufacturer.
Packed-bed scrubber (PBS)	<ol style="list-style-type: none"> 1. Visually inspect device to ensure there is proper drainage, no chromic acid buildup on the packed beds, and no evidence of chemical attack on the structural integrity of the device. 2. Visually inspect back portion of the chevron blade mist eliminator to ensure that it is dry and there is no breakthrough of chromic acid mist. 3. Same as number 3 above 4. Add fresh makeup water to the top of the packed bed 	<ol style="list-style-type: none"> 1. 1/quarter. 2. 1/quarter. 3. 1/quarter. 4. Whenever makeup
PBS/CMP system	<ol style="list-style-type: none"> 1. Same as for CMP system 2. Same as for CMP system 3. Same as for CMP system 4. Same as for CMP system 	<ol style="list-style-type: none"> 1. 1/quarter. 2. 1/quarter. 3. 1/quarter. 4. Per manufacturer.
Fiber-bed mist eliminator	<ol style="list-style-type: none"> 1. Visually inspect fiber-bed unit and prefiltering device to ensure there is proper drainage, no chromic acid buildup in the units, and no evidence of chemical attack on the structural integrity of the devices. 2. Visually inspect ductwork from tank or tanks to the control device to ensure there are no leaks. 3. Perform washdown of fiber elements in accordance with manufacturers recommendations. 	<ol style="list-style-type: none"> 1. 1/quarter 2. 1/quarter. 3. Per manufacture.
Air pollution control device (APCD) not listed in rule.	To be proposed by the source for approval by the Administrator	To be proposed by the Administrator for approval by the Administrator

Monitoring Equipment

Pilot tube	Backflush with water, or remove from the duct and rinse with fresh water. Replace in the duct and rotate 180 degrees to ensure that the same zero reading is obtained. Check pilot tube ends for damage. Replace pilot tube if cracked or fatigued.	1/quarter.
Stalagmometer	Follow manufacturers recommendations.	

* If greater than 50 percent of the scrubber water is drained (e.g., for maintenance purposes), makeup water may be added to basin.

* For horizontal-flow scrubbers, top is defined as the section of the unit directly above the packing media such that the makeup flow perpendicular to the air flow through the packing. For vertical-flow units, the top is defined as the area downstream of the packing such that the makeup water would flow countercurrent to the air flow through the unit.

* Work practice standards for the control device installed upstream of the fiber-bed mist eliminator to prevent plugging do not apply; the work practice standards for the fiber-bed unit are followed.

All existing sources performing hard chromium electroplating and chromium anodizing must comply with the emission limitations within 2 years of January 23, 1995. All existing sources performing decorative chromium electroplating must comply with the emission limitations within 1 year of

January 23, 1995. All new and reconstructed sources must comply immediately upon startup. Sources must demonstrate initial compliance with the prescribed emission limitation in accordance with §§ 63.343(b) and 63.344. Continuous compliance is demonstrated through the

monitoring required by § 63.343(c), as summarized in Table 3. As indicated in this table, the type of compliance monitoring performed is based on the type of control technique used to comply with the emission limitation, not the type of source being controlled.

TABLE 3.—SUMMARY OF MONITORING REQUIREMENTS

Control technique	Initial compliance test	Parameter(s) for compliance monitoring	Frequency of compliance monitoring
Composite mesh-pad (CMP) system	Yes	Pressure drop across the unit	1/day.
Packed-bed scrubber (PSB)	Yes	Velocity pressure at the inlet of the control system and pressure drop across the unit	1/day.
PBS/CMP system	Yes	Pressure drop across the unit	1/day
Fiber-bed mist eliminator	Yes	Pressure drop across the fiber-bed mist eliminator and the pressure drop across the upstream control device used to prevent plugging.	1/day
Wetting agent-type fume suppressant	Yes (Unless the criteria of § 63.343(b)(2) are met):	Surface tension	Once every 4 hours.
Foam blankets	Yes	Foam thickness	Once per hour.*
Air pollution control device (APCD) not listed in rule.	Yes	To be proposed by the source for approval by Administrator.	N/A.

* Frequency can be decreased according to § 63.343 (c)(5)(ii) and (c)(6)(ii) of subpart N.

Owners or operators of affected sources are required to keep the records required by § 63.346 to document compliance with these standards. Records include those associated with

the work practice standards, performance test results, compliance monitoring data, duration of exceedances, and records to support Federally-enforceable limit on facility

size. Reports must also be periodically submitted. Table 4 summarizes the reports to be submitted and the reporting timeframes.

TABLE 4.—SUMMARY OF REPORTING REQUIREMENTS

Section in Subpart N	Description	Timeframe for submittal
§ 63.345(b)	Notification of construction or reconstruction	Depends on when source was constructed—see § 63.345(b)(5).
§ 63.347(c)(1)	Initial notification	180 days after the effective date.
§ 63.347(c)(2)	—Notification of when construction commenced	—Within 30 days of commencement for sources built after effective date, or with notification required by § 63.345(b) if built prior to effective date.
	—Notification of actual startup	—Within 30 days of startup.
§ 63.347(d)	Notification of performance test	At least 60 days prior to test.
§ 63.347(e)	Notification of compliance status	Within 90 days of performance test (if a test is conducted) or within 30 days of compliance date.
§ 63.347(f)	Notification of performance test results	Within 90 days of performance test.
§ 63.347(g)	Compliance status reports for major sources	2 times/yr, or 4 times/yr if exceedances occur or if requested by Administrator.
§ 63.347(h)	Compliance status reports for area sources	Complete once/yr and maintain on site, or 2 times/yr if exceedances occur or if requested by Administrator.
§ 63.347(i)	—Initial notification for users of TVC baths	—Within 180 days of effective date.
	—Notification of compliance status for users of TVC baths	—Within 30 days of compliance date.
	—Notification of process change	—Within 30 days of process change.

B. Summary of Major Change Since Proposal

In response to public comments received and additional analyses performed by the EPA, the following

changes have been made to the final rule since proposal.

1. The emission limits associated with the control technologies that form the bases for the standards have been revised. The emission limit based on the use of composite mesh-pad system is

0.015 milligrams of total chromium per standard cubic meter (mg/dscm) of 1 exhaust air. The emission limit based on the use of fume suppressant is 0.01 mg/dscm. The emission limit based on unchanged (0.03 mg/dscm).

TABLE 3.—SUMMARY OF MONITORING REQUIREMENTS

Control technique	Initial compliance test	Parameter(s) for compliance monitoring	Frequency of compliance monitoring
Composite mesh-pad (CMP) system	Yes	Pressure drop across the unit	1/day.
Packed-bed scrubber (PBS)	Yes	Velocity pressure at the inlet of the control system and pressure drop across the unit	1/day.
PBS/CMP system	Yes	Pressure drop across the unit	1/day.
Fiber-bed mist eliminator	Yes	Pressure drop across the fiber-bed mist eliminator and the pressure drop across the upstream control device used to prevent plugging.	1/day.
Wetting agent-type fume suppressant	Yes (Unless the criteria of § 63.343(b)(2) are met).	Surface tension	Once every 4 hours
Foam blankets	Yes	Foam thickness	Once per hour."
Air pollution control device (APCD) not listed in rule.	Yes	To be proposed by the source for approval by Administrator.	NA

*Frequency can be decreased according to § 63.343 (c)(5)(ii) and (c)(6)(ii) of subpart N.

TABLE 4.—SUMMARY OF REPORTING REQUIREMENTS

Section in subpart N	Description	Timeframe for submittal
§ 63.345(b)	Notification of construction or reconstruction	Depends on when source was constructed—see § 63.345(i)
§ 63.347(c)(1)	Initial notification	180 days after the effective date.
§ 63.347(c)(2)	—Notification of when construction commenced	—Within 30 days of commencement for sources built after effective date, or with notification required by § 63.345 built prior to effective date.
	—Notification of actual startup	—Within 30 days of startup.
§ 63.347(d)	Notification of performance test	At least 60 days prior to test.
§ 63.347(e)	Notification of compliance status	Within 90 days of performance test (if a test is conducted within 30 days of compliance date).
§ 63.347(f)	Notification of performance test results	Within 90 days of performance test.
§ 63.347(g)	Compliance status reports for major sources	2 times/yr, or 4 times/yr if exceedances occur or if required by Administrator.
§ 63.347(h)	Compliance status reports for area sources	Complete once/yr and maintain on site, or 2 times/yr if exceedances occur or if requested by Administrator.
§ 63.347(i)	—Initial notification for users of TVC baths	—Within 180 days of effective date.
	—Notification of compliance status for users of TVC baths.	—Within 30 days of compliance date.
	—Notification of process change	—Within 30 days of process change.

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If not, why? _____

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1 In Your Opinion, Is Anything Missing That Would Make This Report Better?

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• Overall Quality of Report

☐ Excellent ☐ Good ☐ Fair ☐ Poor

• Usefulness to You/Your Organization

☐ Very Useful ☐ Moderately Useful ☐ N/A

1 Did/Will your organization implement the results of this project? ☐ Yes ☐ No

If not, why? _____

1 How Did You Receive Report?

☐ Mailed directly to you
☐ Referred to you by someone else

1 Did/Will You Pass Report On To Someone Else?

☐ Yes ☐ No

1 In Your Opinion, Is Anything Missing That Would Make This Report Better?

☐ Yes _____

1 General Comments

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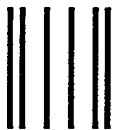
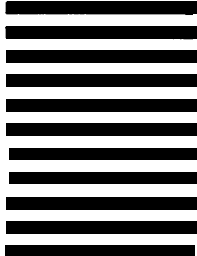
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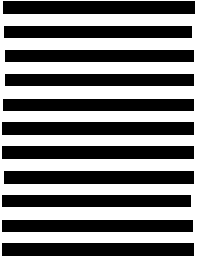
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NSRP Coordinator
The University of Michigan
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Marine Systems Division
2901 Baxter Rd.
Ann Arbor, MI 48109-2150
Phone: (313) 763-2465
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